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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Billed Party Preference) CC Docket No. 92-77
for InterLATA Calls)

REPLY COMMENTS

Metropolitan Fiber Systems, Inc. ("MFS"), by its undersigned counsel, hereby submits its reply to the initial comments, filed on July 7, 1992, in the above-referenced proceeding, which addressed the merits of a proposed "billed party preference" ("BPP") routing methodology for 0+ interLATA payphone traffic and other types of operator-assisted interLATA traffic.[1/] As discussed below, MFS urges the Commission to decline to adopt BPP on the grounds that any limited incremental benefits that might accrue to consumers under the BPP proposal are significantly outweighed by both the initial and long-term costs of creating a local exchange carrier ("LEC") bottleneck through which all 0+ interLATA calls must pass. Adoption of BPP would preclude opportunities for innovative competition in the development of call processing and routing technology, and will therefore contravene the Commission's policies which promote competition in the provision of local services. In addition, BPP would artificially increase the cost to consumers of completing 0+ operator-assisted calls.

[1/] MFS currently provides competitive access services in twelve cities and anticipates operating networks in two additional cities by the end of this year.

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List A B C D E

I. BILLED PARTY PREFERENCE IS ANTICOMPETITIVE, WILL IMPOSE AN UNNECESSARY LEC BOTTLENECK FOR ALL 0+ CALLS, AND WILL IMPOSE ARTIFICIAL AND AVOIDABLE COSTS ON 0+ CALLS

Currently the majority of all 0+ calls are routed by the LEC to the interexchange carrier ("IXC") chosen by the customer of the originating telephone line.[2] As described in the Commission's May 8, 1992, Notice of Proposed Rulemaking ("Notice"), BPP would fundamentally alter this mechanism by requiring that all interLATA 0+ calls be routed from the end user to the local exchange carrier ("LEC") operator service switch ("OSS"). Using an interconnected system of Line Information Data Bases ("LIDBs"), the OSS would identify the preferred IXC of the party which will be billed for the call, and would route the call to that IXC.[3] As the Commission's Notice also recognized, BPP's appeal is limited to the fact that it will enable consumers to reach their presubscribed IXC without dialing an access code.[4] Further, it appears that it will be at least four years before BPP can be implemented.[5]

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[2] This line could be local loop providing switched access or a private line used to provide special access.

[3] For 0+ collect and third number calls the LECs would identify the preferred carrier by launching a query from the OSS to a LIDB via common channel signalling. For calls which the end user has requested be billed to an IXC calling card, a LIDB query would not be necessary because the LECs could identify the preferred IXC from the calling card number. See Notice at ¶¶ 10 and 11. However if the LECs continue to perform the ten-digit screening currently utilized, the LECs apparently would not be able to identify calls placed to calling cards which are not in the Card Issuer Identifier ("CIID") or "891" format. See Notice at ¶ 11 and footnote 19.

[4] As currently envisioned, BPP will not provide any benefit to consumers who choose voluntarily to reach their preferred IXC via an access code.

[5] Bell Atlantic, an early advocate of BPP, indicates that it does not believe that it can fully deploy BPP until mid 1996. Bell Atlantic Comments at p. 2.

However, as the Commission has noted, unlike the situation today where 0+ interLATA calls are routed directly to the presubscribed IXC, BPP will impose the artificial regulatory requirement that all 0+ calls be routed to a LEC OSS for carrier identification functions before being transmitted over LEC facilities to the appropriate IXC. (Notice at ¶ 9.) Thus deployment of BPP would establish a mandatory LEC bottleneck through which all 0+ interLATA calls must be routed. This approach would only further entrench the LECs' monopoly over local services by impeding competition for one market service in the larger local services market.

The establishment of this LEC bottleneck is retrogressive and antithetical to the Commission's policies promoting and implementing the unbundling of service technologies and increasing competition in all service sectors, including the local services market.[6]

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[6] Most recently, see In the Matter of Telephone Company-Cable Television Cross Ownership Rules, Section 63.54 - 63.58, CC Docket No. 87-266, "Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking," released August 14, 1992, at ¶ 94 ("we agree that nondiscriminatory access and unbundling are critical if we are to meet our public interest goals...") and footnote 244 ("in order to further foster telecommunications competition, we note that we are similarly examining ways to increase local telephone company competition").

See also Expanded Interconnection With Local Telephone Company Facilities, "Notice of Proposed Rulemaking and Notice of Inquiry" ("Expanded Interconnection NPRM"), 6 FCC Rcd 3259, 1991 at ¶ 16 (noting that expanded opportunities for third-party interconnection with LEC facilities for the provision of special access services "with its likely increase in competition, will produce significant benefits for consumers that will outweigh any potential costs").

Indeed, by requiring that all 0+ traffic be routed through the LEC, BPP will distort the access market as well as the local and long distance services markets for decades to come. In requiring all 0+ calls to be routed to a LEC, BPP will strip from the IXCs the ability to utilize competitive access providers such as MFS to provide highly economical special access connections between the aggregator locations they serve and IXCs' points-of-presence, thereby reducing network configuration choices, and increasing costs.[7]

With regard to the local services market, BPP will effectively grant the LECs an unjustified monopoly over the routing of operator service calls, thus precluding competition in this segment of the local services market. In effect, LECs will be the "presubscribed" carriers for the local distribution aspect of 0+ calls. This will provide the LECs with a permanent revenue stream from tariffed BPP charges paid by IXCs, and will likely also increase their 0+ intraLATA market share and revenues.

Despite these advantages, initial comments indicate that even the LECs are concerned that the cost of BPP will be excessive. For example, because of concern over the high cost of implementing BPP, Pacific Bell and Nevada Bell specifically condition approval of BPP on the requirement that all interLATA

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[7] See Comments of the American Hotel and Motel Association, July 7, 1992 at pp. 8-9 (noting that contrary to the presumption that BPP would benefit consumers, that BPP would in fact impose new costs upon hotel guests by eliminating the hotel industry's ability to connect hotel traffic to the hotel's presubscribed IXC via broadband T-1 connections). It is precisely that type of connection that competitive service providers such as MFS are now able to provide.

calling card, collect and third party calls be subject to BPP, apparently even where the caller chooses to initiate the call using his or her IXC's access code.[8] Similarly, Bell Atlantic, an early and prominent advocate of BPP, now suggests that the cost of implementing BPP could be so high that the costs should be recovered through rates for all 0+ calls, those routed to the LEC under BPP as well as those dialed with an access code. (Bell Atlantic Comments at p. 6.) Bell Atlantic has also expressed the novel concern that if BPP were to be deployed that IXCs would encourage their customers to dial calls using their access codes to avoid the unnecessary costs associated with BPP. See Bell Atlantic Comments at p. 7. Thus Bell Atlantic finds itself in the unusual position of simultaneously suggesting that BPP is an important consumer protection which the Commission should impose upon all 0+ callers, even those who would affirmatively seek to avoid its "protection," due to unnecessary costs associated with that "protection."

BPP will also distort the long distance services market, because BPP will foreclose opportunities for innovative competition in designing and implementing efficient routing technologies which will the lower costs which IXCs must bear in completing 0+ calls. It is these very benefits that the

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[8] See Comments of Pacific Bell and Nevada Bell, at pp. 11-13 ("implementation of BPP requires LECs to incur substantial costs.... If OSPs do not have to use BPP, then those costs may not be recoverable. Therefore the Commission must mandate all players to participate in BPP, not just LECs").

Commission expects increased competition to bring.[9] It will also force IXCs to invest in additional (and otherwise unnecessary) network facilities in order physically to accommodate BPP call routing. To the extent that artificial regulatory requirements impose unnecessary costs upon IXCs, IXCs will be forced to pass on to consumers the excessive access charges which they would otherwise be able to avoid.

Thus, in all three markets the ultimate result of BPP will be that the IXCs will have to pass on to consumers artificial (and otherwise unnecessary) costs in the form of higher telephone usage charges. Artificial regulatory constraints should not drive decisions about the deployment of technology and capital investment or preclude future decisions from being made on a rational, market-driven basis.

II. BILLED PARTY PREFERENCE IS PREMATURE, AND SHOULD NOT BE ADOPTED BECAUSE LESS COSTLY, MORE APPROPRIATE REMEDIES ARE CURRENTLY AVAILABLE

As the Commission has recognized (Notice at ¶¶ 7-8) and as virtually all of the non-LEC parties have emphasized in their initial comments, actions by both Congress and the Commission have recently established nationwide rules for the operator services market which have, and will continue to, significantly

[9] See Expanded Interconnection NPRM at ¶¶ 11-16 (concluding that removing the barriers in current special access tariffs to allow greater competition will result in substantial benefits, including subjecting LEC operations to the discipline of greater competition, consequent lowered prices, and increased efficiency of LEC operations. "It should also provide a competitive spur for the LECs to deploy new technologies and improve service quality." Id. at ¶ 13.

increase consumer's ability to access the IXC of his or her choice. Indeed, under the Telephone Operator Consumer Services Improvement Act of 1990 (the "Act") and recent Commission decisions implementing the Act, consumers have, or will soon have, virtually unrestricted access to their preferred IXC from aggregator locations. Under the Commission's rules 10XXX access will be unblocked from private payphones in the near term, and most aggregator locations will unblock access to IXCs for 0+ traffic within the coming year. Indeed, in light of the Commission's requirement that all IXCs establish an 800 or 950 access code, consumers will have virtually unrestricted access to complete 0+ calls over the IXC of his or her choice three to four years before BPP could even be implemented.

In light of these significant developments, the Commission's BPP proposal is premature and particularly ill-timed, because it proposes to implement years from now a peculiarly cumbersome and inordinately expensive solution to a problem that the Commission already has addressed. Before taking the extraordinary step of imposing, at an unknown cost, an artificial regulatory solution such as BPP, the Commission should first endeavor to assess and monitor the effect of its recent efforts. Given the Commission's recent extensive efforts to open the 0+ market as well as the local access market, BPP is a premature, draconian measure that will increase costs to consumers without commensurate benefit.

CONCLUSION

BPP will impose an artificial regulatory distortion upon the competitive access market, as well as the local and long distance services markets, and will therefore impose significant and unnecessary costs upon consumers by precluding, for decades to come, opportunities to develop innovative and efficient routing technologies which will lower the cost of completing 0+ interLATA calls. In light of the Commission's recent rulemakings, the result of which has been to mandate universal access to all IXCs, adoption of BPP is not in the public interest.

Respectfully submitted,

Andrew Lipman DF

Andrew D. Lipman
Dana Frix

SWIDLER & BERLIN, CHTD.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 944-4833

and

Cindy Z. Schonhaut, Director
Government and Legislative Affairs
Metropolitan Fiber Systems, Inc.
Government Affairs Office
3000 K Street, N.W.
Washington, D.C. 20007-3851
(202) 944-5209

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